IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 150 OF 2005
IN
WRIT PETITION NO. 3902 OF 2005

WITH

LETTERS PATENT APPEAL NO. 144 OF 2005
IN
WRIT PETITION NO. 4392 OF 2005

NICHOLAS PIRAMAL INDIA LTD. .. APPELLANTS

Versus

NICHOLAS EMPLOYEES UNION & ORS... RESPONDENTS

Mr. J.P. Cama Sr. Counsel with Mr.Bhakrat Goel with Mr. R.P. Bharuch with Ms. Sushma Joshi i/b Haresh Mehta & Co. for appellants

Mr. Arshad Shaikh with Mr. V. M. Parkar for respondents

CORAM:-SMT. RANJANA DESAI &

D.B. BHOSALE, JJ.

DATED:-1/3/2006

P.C.

. In these appeals order dated 6th July, 2005 passed by the learned single Judge in Writ Petition No. 3902 of 2005 and Writ Petition No. 4392 of 2005 is under challenge. Writ Petition No. 3902 of 2005 is filed by Nicholas Employees Union & Ors. ("union" for convenience) and Writ Petition No.

4392 of 2005 is filed by Nicholas Piramal India Ltd. & Ors. ("company" for convenience).

2. It appears that by the order impugned in these petitions the Industrial Court has held that the company has committed an unfair labour practice under item-9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court has concluded that the workmen have proved that the letters dated 13th July, 2002 issued to them are illegal and non est and amount to illegal termination from service. The Industrial Court has also found that there was a breach of Section 25FF as well as Section 33(1) of the Industrial Disputes Act, 1947. While granting the relief, however, the Industrial Court was of the view that reinstatement could not be directed in view of certain subsequent events. Instead, the Industrial Court has held that the ends of justice would be met if the workmen are given compensation on the basis of the Voluntary Retirement Scheme stipulated by the Industrial Court in paragraph 140 of the judgment.

3. The company as well as the union challenged the said order in the aforementioned writ petitions.

On 6th July, 2005, the learned Single Judge issued Rule and expedited the writ petitions. Following interim order was passed;

> i) The workmen who have retired shall be paid the Provident Fund amounts within four weeks from today. The workmen who will retire in future shall also be paid their Provident Fund amounts immediately on retirement. These workmen would adjust the amounts of retrenchment compensation and gratuity already paid to them towards full wages from 13th July, 2002 till their dates of retirement;
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> ii) For those workmen who are still in service, the Company will pay full wages from the date of Order of the Industrial Court. These wages will be set off against the retrenchment compensation and gratuity which has already been paid to the workmen. The payment in respect of the balance amount from the date of termination of service to the date of the order of the Industrial Court will be

made to the workmen with interest as directed by the Court at the stage of final hearing of these petitions.

iii) All the workmen shall file affidavits in this Court containing an undertaking to the effect that in the event they do not succeed in their Writ Petition, they will return the amounts paid to them towards wages pursuant to this order, if so directed by the court. The undertakings shall be filed in this Court within four weeks from today.

4. Being aggrieved by this order the company preferred the instant letters patent appeals. Letters Patent Appeal No. 150 of 2005 was rejected on 18th October, 2005 holding that the letters patent appeal is directed against the order passed under Article 227 of the Constitution of India and at an inter-locutory stage and no such appeal against the interim order is maintainable.

5. Letters Patent Appeal No. 144 of 2005 was dismissed on 27th October, 2005 holding that no

appeal under Letters Patent is maintainable against an interlocutory order. Special leave petitions were filed by the company challenging these orders.

6. On 23rd January, 2006 the Supreme Court disposed of the special leave petitions. We may quote the relevant observations of the Supreme Court:

> "We are of the view that the High Court should reconsider this issue after hearing the submissions of the parties on the decision in Shah Babulal Khimji vs. Jayaben D. Kania and Another, AIR 1981 SC 1786. This is without prejudice to the contentions of the respondents who appears on caveat that even, if the impugned order is held to be appealable as a judgment under clause 15 of the Letters Patent. Nevertheless an appeal would not lie because it would in substance be an appeal from an order passed under Article 227 of the Constitution. The High Court may consider this issue also. The High Court

> is requested to dispose of the pending appeal of the appellant as expeditiously as is conveniently possible, preferably within three months from the date of this order."

Thus after the Supreme Court's order the present letters patent appeals are being heard for admission.

7. The preliminary objection to the maintainability of the present letters patent appeals is raised on the basis of the judgment of the Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania, AIR 1981 SC 1786**. The learned counsel for the respondent has relied on paragraph 113 of this judgment where the Supreme Court has referred to three kinds of judgments. Sub clause (3) of paragraph 113 of the judgment refers to intermediary or interlocutory judgment. The Supreme Court has stated that there may be interlocutory orders which are not covered by Order 43, Rule 1 of the Code of Civil Procedure but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important

aspect of the trial in an anciliary proceeding. The learned counsel also took us to paragraphs 81 and 82 of the judgment where the Supreme Court quoted the following observations from **Justice of the Peace for Calcutta**, **1872-8 Beng LR 433.**

> "We think that "judgment" in Cl. 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory, the differences between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

8. The Supreme Court has referred to the test laid down in the said judgment to decide whether or not an order passed would be a judgment. We may quote the relevant observations of the Supreme Court;

> "82. An analysis of the observations of the Chief Justice would reveal that the following tests were laid down by him in

order to decide whether or not an order passed by the Trial Judgment would be a judgment:

(1) a decision which affects the merits of the question between the parties;

(2) by determining some right or liability;

(3) the order determining the right or liability may be final, preliminary or interlocutory but the determination must be final or one which decides even a part of the controversy finally leaving other matters to be decided later."

9. The learned counsel contended that in this case there is no determination even of a part of controversy finally. He drew our attention to sub-clause (iii) of paragraph 8 of the impugned order, where the learned single Judge has directed the workmen to file affidavits containing an undertaking to the effect that in the event they do not succeed in their Writ Petition, they will return the amounts paid to them towards wages

pursuant to the said orders, if so directed by the court. He submitted that this indicates that there is no finality attached to the impugned order. The learned counsel, therefore, contended that the present letters patent appeals would not be maintainable.

10. We are unable to agree with the learned counsel. From the chart shown to us by the learned counsel, we find that huge amount of retrenchment compensation and gratuity have been paid to the workmen. Sub-clause (ii) of paragraph 8 states that the company will pay full wages from the date of order of the Industrial Court. These wages will be set off against the retrenchment compensation and gratuity which has already been paid to the workmen. This means that the moment the amount of retrenchment compensation and gratuity is exhausted after set off the workmen will get full wages. We find that the company is disputing the fact that the workmen are in the employment of the company. Though undertakings are ordered to be taken from the workmen, it is common knowledge that it would be extremely difficult for the company to recover the amount in case the workmen lose. In our opinion granting such sweeping relief to the

employees at this stage would mean deciding a part of controversy at an interlocutory stage finally. This would also adversely affect the valuable right of the company. This means that the impugned order has characteristics and trappings of finality.

11. Sofar as the argument that though the petitions are filed under Article 226 and 227 of the Constitution of India, they are in fact under Article 227 of the Constitution of India and hence letters patent appeals are not maintainable is concerned in view of conflict of opinion between two Benches of this court, we have referred the said issue to a larger Bench. In view of this, that question will have to be kept open and the letters patent appeals will have to be admitted, subject to that question.

12. In the circumstances, we admit the appeals. However, the question whether the letters patent appeals would be maintainable or not because the petitions though filed under Article 226 and 227 of the Constitution of India are in effect under Article 227 of the Constitution is kept open. The appeals are admitted subject to this question.

13. We must now examine what interim relief should be granted. The learned counsel for the respondents contended that the respondents have a strong prima facie case and hence interim relief order passed by the learned Single Judge should not be disturbed. He contended that not only that the Industrial Court has held that termination of services of the workmen is illegal, it has also held that there is breach of Section 25FF and Section 33(1) of the Industrial Disputes Act. In this connection he relied on **Anakapalla Co-operative Agricultural and Industrial Society Limited v. Workmen, 730 SCR (1963) Supp.** and **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Ors., (2002) 2** S C C 244. The learned counsel contended that admittedly in this case no application has been made by the company as prescribed under Section 33(1) of the Industrial Disputes Act. Relying upon the above judgments, the learned counsel contended that the effect of not making an application would be that the employees would continue to be in the employment of the company. He submitted that they would, therefore, be entitled to all benefits available. In the circumstances, according to the learned counsel this court ought not to interfere with the

interim relief. The learned counsel also urged that the workmen are ready to work but the company is not providing work to them despite having given undertaking to that effect. This fact also be taken into consideration.

14. Mr. Cama, learned counsel for the appellant on the other hand relied on the judgment of this court in **Anglo-French Drugs and Industries Ltd. and Roche/Anglo-French Employees' Union. 2005 (107) FLR 223** and contended that in fact there is a closure of establishment and hence there can be no alteration of condition of service within the meaning of Section 33(1) of the Industrial Disputes Act. The learned Counsel further contended that the Industrial Court has not granted reinstatement but only compensation and, therefore, order directing payment of full back wages was not warranted. He relied on jugments of the Supreme Court in (1) **A.P. SRTC (Uddapah V K Bajjanna, 2002 I CLR 214 (2) Allahabad Jal Sansthan v. Daya Shankar Pal & Anr., 2005 II CLR 453 (3) M.P. State Electricity Board v. Smt. Jarine Bee, AIR 2003 SC 2657**. He submitted that even in cases where reinstatement was granted, the Supreme Court has in the above judgments stated that interest of justice

would be served by awarding 50% of the backwages. The learned counsel submitted that in the light of the above judgments, the impugned order needs to be moulded.

15. We are not inclined to go at this stage into the question of alleged breach of Section 33(1) of the Industrial Disputes Act because the company has challenged this finding in the writ petition filed by it. This issue would be, therefore, decided at the final hearing of the pending proceedings. We, however, feel that in the circumstances of the case, interest of justice require that clause (ii) of paragraph 8 of the impugned order should be modified to the following extent. Sub-clause (ii) of paragraph 8 as modified would read as under:

"For the workmen concerned in the petition, the company will pay fifty per cent wages from the date of the order of the Industrial court. These wages will be set off against the retrenchment compensation and gratuity which has already been paid to the workmen. After the said adjustment the company will continue to pay 50% of the wages to the said workmen till the disposal of the writ petition. The payment in respect of the balance

amount from the date of termination of service to the date of order of the Industrial Court will be made to the workmen with interest as directed by the Court at the stage of final hearing of these petitions.

16. Sofar as clause (iv) is concerned, the appellants will furnish a bank guarantee to secure the amount to the satisfaction of the Prothonotary & Senior Master of this court. Mr. Cama learned counsel for the appellants submitted that in fact this amount is only two crores and not four crores as mentioned in the synopsis of the memo of appeal. We do not want to comment on this. We feel that it is a matter of calculation. The appellant must furnish bank guarantee in this court for such amount as clause 4 of paragraph 8 stipulates. Rest of the interim orders stands. The interim order modified to the above extent shall operate during the pendency of both the letters patent appeals.

17. At this stage the learned counsel for the respondents states that the letters patent appeals be disposed of with the above modification of the impugned order.

18. In the circumstances both the letters patent appeals stand disposed of. The impugned order modified to the above extent shall operate during the pendency of the writ petitions.

19. We make it clear that the consent given by the learned counsel for the respondents for disposal of the appeals should not be construed to mean that he has consented to the order that is passed by us today. All contentions of both sides on merits of the case are kept open.

20. We grant liberty to the parties to move the learned Single Judge, for fixing the date of hearing of the writ petitions. We are aware of the extremely crowded docket of the learned Single Judge. However, considering the nature of the dispute involved we only request the learned Single Judge as far as possible to dispose of the present writ petitions within six months on such request being made.

21. In view of the disposal of the letters patent appeals, all civil applications stand disposed of.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)